

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

By the foregoing amendment, claims 1-3, 6 and 8-9 have been amended. Claims 8-9 and 11-19 have been withdrawn from consideration. Thus, claims 1-7 and 10 are currently pending in the application and subject to examination.

In the Office Action mailed October 12, 2005, the Examiner rejected claims 1, 3-5 and 7 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,236,141 to Sato, et al ("Sato"). Under 35 U.S.C. § 103(a), the Examiner rejected claims 2 and 10 as being unpatentable over Sato in view of U.S. Patent No. 5,506,552 to Seki et al. ("Seki"). The Examiner objected to claim 6 as being dependent upon a rejected claim, but noted that claim 6 would be allowable if rewritten in independent form including all of the limitations of the base claim. To the extent that the rejections and objection remain applicable to the claims currently pending, the Applicant hereby traverses the rejections, as follows.

Applicants submit that Sato does not describe or suggest at least the limitation of a cavity formed in the silicon substrate located below each of the resonators, as claimed in claim 1, as amended. Instead, Sato teaches a groove formed beneath multiple resonators.

For at least this reason, Applicants submit that claim 1, as amended, is allowable over the cited prior art. As claim 1, is allowable, Applicants submit that claims 2-7 and 10, which depend from allowable claim 1, are likewise allowable over the cited prior art.

With regard to claims 2 and 10, in addition to the discussion for claim 1, Applicants submit that Seki does not cure the deficiency of Sato. Thus, for at least this reason, claims 2 and 10 are allowable over the cited prior art.

With regard to each of the rejection of claims 2 and 10 under §103 in the Office Action, it is also respectfully submitted that the Examiner has not yet set forth a *prima facie* case of obviousness. The PTO has the burden under §103 to establish a *prima facie* case of obviousness. In re Fine, 5 U.S.P.Q.2nd 1596, 1598 (Fed. Cir. 1988). Both the case law of the Federal Circuit and the PTO itself have made clear that where a modification must be made to the prior art to reject or invalidate a claim under §103, there must be a showing of proper motivation to do so. The mere fact that a prior art reference could arguably be modified to meet the claim is insufficient to establish obviousness. The PTO can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. Id. In order to establish obviousness, there must be a suggestion or motivation in the reference to do so. See also In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984) (prior art could not be turned upside down without motivation to do so); In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1998); In re Dembiczak, 175 F.3d 994 (Fed. Cir. 1999); In re Lee, 277 F.3d 1338 (Fed. Cir. 2002).

In the Office Action, the Examiner merely states that the present invention is obvious in light of the cited references. See, e.g., Office Action at page 4. This is an insufficient showing of motivation.



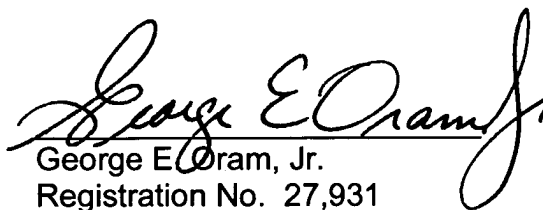
CONCLUSION

For all of the above reasons, it is respectfully submitted that the claims now pending patentability distinguish the present invention from the cited references. Accordingly, reconsideration and withdrawal of the outstanding rejections and an issuance of a Notice of Allowance are earnestly solicited. Should the Examiner determine that any further action is necessary to place this application into better form, the Examiner is encouraged to telephone the undersigned representative at the number listed below.

In the event this paper is not considered to be timely filed, the Applicants hereby petition for an appropriate extension of time. The fee for this extension may be charged to our Deposit Account No. 01-2300. The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment associated with this communication to Deposit Account No. 01-2300, associated with attorney docket number 025720-00011.

Respectfully submitted,

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